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**RESPONSE UNDER 37 CFR 1.116
EXPEDITED PROCEDURE
EXAMINING GROUP 3641**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

For: METHOD TO CONTROL REACTIONS
INVOLVING ISOTOPIC FUEL
WITHIN A MATERIAL USING
ORTHOGONAL ELECTRIC-FIELDS

Serial no. 09/ 748,691

Filed: 12/26/2000

This is a division of Serial no. 07/ 760,970

Filed: 09/17/1991

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APR 02 2003

GROUP 3600

Group Art Unit: 3641

Examiner: Palabrica, R.J.

March 24, 2003

Commissioner of Patents and Trademarks
Washington, D.C. 20231

**PETITION TO THE COMMISSIONER
PURSUANT TO 37 C.F.R. 1.181**

1. This Petition is made pursuant to 37 C.F.R. 1.181 to the Commissioner of Patents, and is made to invoke his supervisory authority to correct the situation with respect to the recent Office Communication [Exhibit "A" attached, as described below]. Pursuant to 37 C.F.R. 1.181, there is no fee. This Petition is reasonable, based upon the reasons stated below and confirmed by the facts as discussed in the Declaration supporting this Petition.

2. In the discussion below, reference is made to the Declaration of Dr. Mitchell Swartz (hereinafter called the "Swartz Declaration") dated March 24, 2003.

3. This motion is reasonable because of Mr. Palabrica's failure to respond to Applicant's submitted Evidence, data, Declarations, Amicus Curiae Briefs, and much of Applicant's Response, and Mr. Palabrica's failure to follow a uniform standard of review. Furthermore, there remain standing Orders to address said Declarations from the Patent of which this is a Divisional. They are included herein as Exhibit "B", attached hereto.

4. Mr. Palabrica is Obligated to have communications consistent with the pleadings in the Office including past unrebutted Declarations [*In re Gazave*, 379 F.2d 973, 978, 154 USPQ 92, 96 (CCPA 1967); *In re Chilowsky*, 229 F.2d 457, 462, 108 USPQ 321, 325 (CCPA 1956); *In re Jolles*, 628 F.2d 1322, 206 USPQ 885 (CCPA 1980)] but he has not.

5. Mr. Palabrica's purported "new matter" relates to citation of patent '381. However, '381 is a divisional from the same identical and same parent application ('970). Therefore, it cannot possibly be new matter. Furthermore,

"An original specification can also incorporate by reference subject matter disclosed in another patent application which is pending before the Patent Office and hence unavailable to the public."

[In re JOLLES; United States Court of Customs and Patent Appeals, 1980, 628 F.2d, 1322, 206 USPQ 885]

6. Mr. Palabrica's purported "new matter" were corrections added only after Mr. Palabrica demanded the specific clarification. The Applicant in good faith added said clarifications, known to those skilled-in-the-art but apparently NOT to the Examiner. They are NOT new material, and the Applicant submitted a timely, received, Declaration stating so. The standards of review require the Examiner to explain precisely and substantively why the matter which is known to those skilled-in-the-art and consistent with *In re Jolles* (supra) and found in the original specification of the above-entitled application is "new matter". Applicant reserves the right to take this case to Federal Court, if necessary, to protect the continued usurpation of his civil and Constitutional rights.

Wherefore, Applicant requests the Commissioner invoke his inherent supervisory power to correct this matter by directing the Examiner to substantively respond to the timely submitted Declarations and Exhibits. The U.S. Supreme Court has ruled that any *pro se* litigant is entitled to less stringent standards [U.S. Rep volume 404, pages 520-521 (72)].

Respectfully,



Mitchell R. Swartz, ScD, MD, EE
Post Office Box 81135
Wellesley Hills, Mass. 02481

Certificate Of Mailing [37 CFR 1.8(a)]

March 24, 2003

To Whom it Does Concern:

I hereby certify that this correspondence will be deposited with the United States Postal Service by First Class Mail, postage prepaid, in an envelope addressed to

"The Commissioner of Patents and Trademarks
Washington, D.C. 20231" on the date below.

Thank you.

Sincerely,

March 24, 2003

